

### Remarks

Claims 1-22 are pending in this application before entry of this amendment. Restriction imposed by the PTO has restricted the pending subject matter to previously defined Group II - claims 1-22 drawn to compounds of formula I, compositions comprising the same, and a method of using the same compound wherein damage, disorder, or disease is caused by a neurodegenerative disorder. Claim 20 has been withdrawn from consideration.

By way of this Amendment, claims 1, 4, 6, 8, 9, 11, and 22 have been amended, and claims 12-21 have been canceled. In addition to addressing the rejections below, several claim amendments have been made to correct informalities. The reasons and support for such amendments should be readily apparent. No new matter has been added.

### Claims Rejections Under 35 USC 112

#### *Enablement for Substituents Y and Z.*

Claims 1-19 and 21-22 are rejected under 35 USC 112, first paragraph, as nonenabled. Specifically, the Office argues that instances of variables Y and Z other than H or halogen are not enabled by the specification. (Applicants note that the Office discusses "where variable X is H" at various points in the argument. Since X may not be H according to the claims, Applicants assume that the Office intended to object to variables Y and Z as non-enabled and have responded accordingly). The Office also objects to the recitation of solvates. Recitation of solvates has been removed from the claims.

Referring again to substituents Y and Z, the specification enables a large number of possible substituents that are not acknowledged by the Office. First, the specification discloses various ways of substituting aromatic structures including substitutions, alkylations, halogenations, hydroxylations as well as oxidations or reductions of substituents. See p. 21, l.14 – p.22, l.5 of the originally-filed specification.

In addition, particular guidance toward adding the recited Y and Z groups is given by literature references (incorporated by reference) cited in the Examples. For instance, I. Ueda et al., *Chem. Pharm. Bull.* 23(10)2223-2231 (full copy included in IDS filed along with this Amendment) is referenced on p.41 of the specification. With regard to production of intermediate compounds used to make the claimed dibenzoazulenes, Ueda teaches (see Tables II – V) the addition of a large variety of substituents (ex. CH<sub>3</sub>, OCH<sub>3</sub>, SCH<sub>3</sub>, NO<sub>2</sub>, etc.)

Applicants submit that, in view of the state of the art at the time the application was filed, the general teachings of the specification (pp.21-22), and the specific teachings of references such as Ueda, one of ordinary skill in the art would be well aware of how to make the recited substitutions to Y and Z.

*Enablement for Method of Treating Neurodegenerative Diseases*

Claims 11-19 and 21-22 are rejected under 35 USC 112, first paragraph, as non-enabled for the “treatment of any diseased related to modulation of 5-HT<sub>2A</sub>, 5-HT<sub>2C</sub>, or  $\sigma$ 1 receptors”. Claim 11 has been amended to recite a method of treating the currently elected condition, i.e. neurodegenerative disease. As such, objections to methods of treating other disease states, or of generally acting upon one or more receptors, have been rendered moot. Also, the specification and claims have been amended such that methods of prevention are no longer claimed.

*Distinct Claiming of a Method of Treatment*

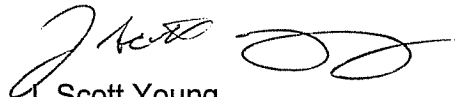
Claims 11-19 and 21-22 are rejected under 35 USC 112, second paragraph, as being indefinite. Particularly, the Office objects to Applicants manner of claiming a method of treatment with reference to activity on a neurotransmitter or receptor. The method of treatment claims have been amended and, as currently claimed, have obviated this rejection.

Conclusion

In view of the amendments and arguments presented above, Applicants submit that the instant application is in condition for allowance.

Applicants believe that no fees are due in connection with the filing of this paper other than those specifically authorized herewith. However, should any other fees be deemed necessary to effect the timely filing of this paper, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 07-1392. The Examiner is invited to contact the undersigned at (919) 483-8160, to discuss this case, if desired.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Scott Young', with a stylized flourish at the end.

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